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January 30, 2004

Ms. Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
Office of the Secretary
20th Street and Constitution Avenue, N.W.
Washington, D.C. 20551
regs.comments@federal reserve.gov
Attention: Docket No. R-1167; Regulation Z
Docket No. R-1168; Regulation B
Docket No. R-1169; Regulation E
Docket No. R-1171; Regulation DD

RE: Proposed Revisions to Consumer Disclosure Regulations – Comments of Capital One Financial Corporation

Dear Sit or Madam:

Capital One Financial Corporation ("Capital One") appreciates the opportunity to comment on the Proposed Rules issued by the Board of Governors of the Federal Reserve System (the "Board") with respect to the disclosure standards contained in five consumer protection regulations: Regulation Z, Regulation B, Regulation E, Regulation DD, and Regulation M (the "Five Regulations").

Capital One had 47.0 million customers and $71.2 billion in managed loans outstanding, as of December 31, 2003. A Fortune 200 company, Capital One is one of the largest providers of MasterCard and Visa credit cards in the world. Capital One also offers automotive financing through its Capital One Auto Finance business. To conduct its consumer lending businesses and successfully manage the cost of credit, Capital One relies significantly on the stability of the legal standards contained in the Five Regulations, particularly Regulations Z, B, E, and DD.

Meaningful Communication with our Customers is Important

Capital One understands the Board's concerns about the quality of consumer disclosures. We continuously evaluate these important communications with our customers to ensure they receive the information they need to successfully manage their

finances. Disclosing the terms and conditions of our products in a meaningful way is an ongoing imperative for Capital One.

Effective communication with our customers benefits both our customers and Capital One. By understanding the key terms and conditions in their financial contract, our customers are better able to manage their personal finances. This clarity benefits Capital One as well, because when our customers clearly understand the benefits and obligations of their loans, we can more successfully manage the quality of our credit portfolio.

While we share the Board's desire to enhance the quality of consumer disclosures, we are deeply concerned about the approach taken by the Proposed Rules. Changing a fundamental legal standard would likely have serious, systemic consequences that would far outweigh any marginal increase in the clarity of consumer disclosures. We believe the Board should not change the legal standard upon which financial institutions have relied for over thirty years. Rather, we believe the Board and the industry should work together through either a study or re-evaluation of the Model Forms to improve consumer disclosures. As a result, we urge the Board to withdraw the current proposals.

Our more specific comments appear below:

Clear and Conspicuous Disclosure Standard

Changing the Legal Standards in Regulation Z and Regulation B Would Unavoidably Impose Substantial Liability Costs on Lenders.

We disagree with the approach taken by the Proposed Rules to improve consumer disclosures, and we urge the Board to withdraw the Proposed Rules, especially with respect to those regulations that expose lenders to civil liability. The Proposed Rules would fundamentally change the legal standard governing consumer disclosures, thereby greatly increasing litigation costs for creditors. These disclosures present a significantly enhanced danger to banks due to the liability provisions contained in the Truth in Lending Act ("TILA") and the Equal Credit Opportunity Act ("ECOA"). Changing the disclosure standard would essentially neutralize three decades of litigation regarding the meaning of "clear and conspicuous," thereby opening significant litigation exposure simply by changing the standard.

Unlike the authorizing statutes for Regulation Z and Regulation B, the Gramm-Leach-Bliley Act does not allow private rights of actions for inadequate disclosures under Regulation P. We believe that the language "reasonably understandable" and "designed to call attention" would create a significant incentive for attorneys to file lawsuits to establish the boundaries of this new interpretive space. The fact that the examples in the Proposed Rules are joined by the word "and," combined with the repeated use of "whenever possible," would inevitably create more litigation to apply this language to various disclosures, and it would perhaps allow more litigation to get past the summary

judgment phase. However, simply fixing these technical concerns would not successfully address the core problem: changing the legal standard.

The ensuing litigation would essentially recreate the litigation undertaken over the last thirty-five years to clarify the meaning of "clear and conspicuous." By conservative estimate, this prior litigation cost in the hundreds of millions of dollars, and its results have afforded lenders and consumers valuable legal protection by defining crucial legal boundaries. We believe the proposed change to the clear and conspicuous standard would force consumers and the financial services industry to spend hundreds of millions of dollars to litigate the correct interpretation of the new standard. At the same time, the Proposed Rules would compound these costs by erasing the value of decades of legal and regulatory precedent. We believe that this systemic problem cannot be fixed by amending the Proposed Rules, and we therefore urge the Board to withdraw the Proposed Rules and consider different approaches to address the Board's concerns about consumer disclosures.

The Regulation P Standard is Inappropriate for the Types of Disclosures Required by Consumer Financial Contracts, and It Would Generate Extremely High Costs if Applied to the Five Regulations.

The proposed disclosure standard should not be applied to the Five Regulations because of the variety of information provided in consumer financial contracts. The Regulation P standard is only appropriate for notices that stand alone and not for disclosures that specifically govern financial transactions. Lenders have seen no evidence that this standard would produce better disclosures than current standards for disclosures under Regulations B, Z, E, and DD. Regulation P notices are distinguishable from the other types of notices, because Regulation P notices do not typically contain information tailored to a specific customer or transaction and the other notices almost always do.

Several examples illustrate why the proposed standard is unworkable for the Five Regulations. Under Regulation Z, each transaction has a specific APR and finance charge. Periodic statements must contain, among other technical disclosures, an itemized disclosure of the previous balance, the amount of finance charge imposed during the billing cycle, and an explanation of how the finance charge was calculated. In contrast, most institutions create one Regulation P notice for all customers and all products. Information-sharing practices are not typically product-specific or transaction-specific.

The proposed legal standard would generate significant implementation costs without providing accompanying benefits to consumers. We project that the increased postal expenditures and production changes would cost $6-7 million dollars annually. Adding the additional costs of litigation, legal advice, and compliance efforts to this figure, we estimate that the costs generated by this proposal would total tens of millions of dollars. In addition, some of the impacts listed above, such as additional litigation, would generate ongoing costs, rather than one-time charges. We do not believe the Board has published any research regarding these costs to the industry, nor do the

Proposed Rules cite any research that would justify the imposition of these new costs on financial institutions, such as a demonstration that (a) existing disclosures do not adequately communicate clear and conspicuous information to consumers or (b) the Proposed Rules would more effectively accomplish the Board's stated goals.

The Proposal Could Make Consumer Disclosures Less Transparent and More Confusing to Consumers.

We do not believe the Proposed Rules would more effectively accomplish the Board's stated goals than the current legal standard does. The Proposed Rules would require lenders to segregate the "required disclosures" under these regulations from items that are logically related to them, including important contract terms and disclosures that are required by other laws, such as state laws and the Fair Credit Reporting Act. This approach is arguably less clear to consumers focused on the contractual terms of a financial contract, and certainly does not justify (1) the significant costs required to produce those disclosure changes or (2) the significant litigation costs and liability exposure the new standard would create.

For example, the proposed amendment to Regulation Z is particularly problematic for several reasons:

- The terms required to be disclosed under Regulation Z are important and at times must include complex contract terms that are required by law or regulation to include legal or technical terminology (e.g., computation of finance charge).

- TILA and Regulation Z strive to assure "meaningful" disclosure of credit terms. Regulation Z places particular emphasis on accuracy. We believe "meaningful" is a more consumer-friendly standard than the standard of clarity found in Regulation P. The Regulation P standard is not designed to apply to complex financial disclosures.

- Regulation Z requires certain information to be disclosed in a tabular format, which the examples in the Proposal do not recognize. In addition, increasing the type size of disclosures not required to be made within the tables is likely to decrease the impact of that information the Board has determined to be most important.

- The proposed amendment to the staff interpretations appears to conflict with the well-established guidance in the commentary to Section 226.24(b) of Regulation Z. That commentary specifically delineates when abbreviations such as APR may be used without further explanation. The same section of the proposed amendment (226.2(a)(27) 4) requires that "a legend or description" should be provided. This conflict would destabilize the official description, or "safe harbor" standard language, found in the Model Forms and in the rest of the regulation, upon which creditors have been relying for many years and to which consumers

have become accustomed.

- If creditors have to physically separate the Regulation Z disclosures from the contract in order to meet the "other information" guidance, customers are likely to have increased, not decreased, difficulty understanding the transaction. Typical credit agreements actually put the required Regulation Z disclosures in the same document as the contract terms. Regulation Z specifically permits making a reference to the appropriate contract document within the context of the disclosures, and creditors use established methods to differentiate the two categories. Segregating the disclosures from the contract terms would undermine the purpose of the Truth in Lending Act ("TILA"): to provide meaningful information for consumers to make informed decisions.

The limited room currently available on credit documents could also undermine the quality of consumer disclosures if the Proposal were adopted. The "other information" and "type size" guidance could cause creditors to remove from their most important documents disclosures that are consumer-friendly, but not federally mandated. For example, the increase in type size would almost certainly force billing statements to become two pages rather than one, which would then force creditors to choose between the increased costs of using additional paper and removing optional, consumer-friendly disclosures.

The Proposed Rule for Regulation B Significantly Complicates the Industry's Ongoing Effort to Comply with the New Regulation B.

Although it harmonizes a legal standard, the Proposed Rules would definitely not simplify disclosure efforts, particularly with regard to Regulation B. The Proposed Rule for Regulation B comes on the heels of several significant changes to Regulation B (effective April 15, 2003) that Capital One and the industry are still in the process of implementing before the April 15, 2004 mandatory compliance date. These changes include the introduction of a clear and conspicuous standard in Regulation B for the first time. As a result, if the Proposal is adopted with a clear and conspicuous standard different than the one introduced last year, the industry will be forced to reevaluate its disclosure format for a second time in a very short period of time. This frequent changing of standards is duplicative, inefficient, and unreasonably burdensome – particularly since there has been insufficient time for the regulatory community to assess the effectiveness of the proposal against its stated intent ("to ensure that consumers receive noticeable and understandable information"). This lack of coordination also fails to reflect the federal banking agencies' ongoing regulatory burden reduction initiative.

Congress is Currently Considering Changes to Legal Standards for Consumer Disclosures Which Could Conflict with the Board's Proposal.

We believe that the political process is a more appropriate channel in which to consider changing the legal standards for consumer disclosures. For example, the Proposed Rule could conflict with current congressional efforts to address certain

statutory legal standards for consumer disclosures. A bankruptcy reform bill is pending on the floors of both the House and Senate this week that would alter several legal requirements regarding consumer disclosures. This bill contains several provisions that would require the Board to issue disclosure rules regarding minimum payments, introductory rates, late fees, and other topics. Any changes to these legal standards must be thoroughly vetted, and we believe that the congressional process is better suited for deep consideration of the potential impacts that changing the legal standard could have.

Debt Cancellation Contracts and Debt Suspension Agreements

The Proposed Rule for Regulation Z also requests information from financial institutions regarding products known as debt cancellation contracts ("DCCs") and debt suspension agreements ("DSAs"). We would like to offer the following comments in that regard:

1. Regulatory Framework

Capital One believes the Board should note the experience of national banks with the disclosure rule issued by the OCC. The OCC's regulations specifically state that DCCs and DSAs are bank products, not insurance products, that are subject to federal banking regulation, not state insurance regulation (see "National Banks' Authority to Offer DCCs and DSAs" and 12 CFR Section 37.1). State member banks would benefit from the clarity which the OCC has granted to national banks in this regard.

Although the functional structure of DCCs is similar to credit insurance, the legal structures of the two products are very different, and it is this difference that should determine which governmental body regulates DCCs. If the Board decides to issue further rulemaking with respect to DCCs and DSAs, we urge the Board to follow the OCC's recently issued regulations governing the sale of debt cancellation contracts and suspension agreements by national banks (see 12 CFR 37.1 et seq.).

Further, Section 226.4(b)(10) should be amended to delete the reference to "whether or not the debt-cancellation coverage is insurance under applicable law."

2. Expanded Coverages

Section 226.4(d)(3) should be amended to expand the types of coverages permitted by the definition of "finance charges." Some banks offer coverage for specific life events, such as family leave, marriage and divorce. Some banks offer "hardship" coverage, which may be selected at the election of the customer. Frequently, these additional coverages are packaged and sold as a single product, not sold separately, nor added to an existing product. These expanded coverages are of significant value to the customer, and the Board should encourage banks to provide these coverages.

We recommend that the Board include language in Section 226.4(d)(3) to give banks maximum flexibility to offer expanded coverages with respect to DCCs and DSAs. Subsection (d)(3)(ii) could be amended as follows to provide such flexibility:

> "Paragraph (d)(3)(i) of this section applies to fees paid for debt-cancellation coverage that provides for cancellation of all or part of the debtor's liability for amounts exceeding the value of the collateral securing the obligation, **or for significant life events such as** the loss of life, health, or income or in case of accident**, marriage, divorce, family leave, birth of a child, or economic hardship."**

If the Board makes it clear that DCCs and DSAs are not insurance products, there should be no need to amend Regulation Z, Sections 226.4 (b)(8) and (d)(1), unless there is evidence that credit insurance policies, which are subject to state insurance oversight for the content of the policy forms, offer expanded coverages.

3. Disclosure Requirements

For open-end credit plans, DCCs and DSAs are most often sold when an account is opened, or when the credit card is activated, not at consummation of the credit transaction. One reason for this approach is the disclosure requirements in subsection 226.4(d)(3)(i). For example, the requirement to give the anti-tying disclosure in writing, makes it very difficult to sell DCCs or DSAs online because E-Sign will not permit the disclosure to be made electronically. We urge the Board to amend subsection 229.4(d)(3)(i)(A) to permit this disclosure to be made electronically. Also, the requirement in subsection 226.4(d)(3)(i)(C) that a consumer must sign or initial an affirmative written request for coverage makes it impossible to sell DCCs or DSAs over the phone. Monthly fees are easily disclosed in any marketing channel.

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In conclusion, Capital One opposes the proposed changes to the clear and conspicuous disclosure standard. We urge the Board to withdraw the current proposal and to work collaboratively with the financial services industry to pursue other ways to improve the quality of consumer disclosures. We appreciate the opportunity to comment on the Proposed Rules. If you have any questions about this letter, please contact me at (703) 720-2266.

Sincerely,

/s/ Andres L. Navarrete

Andres L. Navarrete
Director and Associate General Counsel
Capital One Financial Corporation